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OF

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ABATEMENT.

If there be a plea in abatement, and of the general issue, on an appeal, after a judgment on the merits, if the plea in abatement does not appear to have been pronounced upon, nor urged in the inferior court, the supreme court will not notice it. *Duncan & al. syndics vs. Bechtel*,

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ATTACHMENT.

- 1 If A.'s agent, real or pretended, draws bills on him which are endorsed and sold by B., who with the proceeds purchases and ships a cargo for A.'s account and risk, which A. declines receiving, denying the authority of the drawer and suffers the bills to be protested, and afterwards a third person sells the cargo and ships a return one, for the account and risk of the owner of the outward cargo, and B. after paying the protested bills, receives the return cargo, it cannot be attached by a creditor of A. *Harrod & al. vs. Glennie & al.*
- 2 If the share of a part owner of a steam boat be

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attached, and the other part owners obtain the delivery of the boat, on giving bond to abide the judgment of the court, their liability does not exceed the interest of the defendant. *Nuncarrow vs. Young & al.*

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- 3 If the property attached appears not to belong to the defendant, he is not in court and there cannot be any proceedings against him. *Woodward & al. vs. Braynard & al.*

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See PRACTICE 5, SLAVE 3.

ADMINISTRATOR. (*Special*)

- 1 He was not entitled to a commission on property, in the possession of the deceased, at his death, but belonging to other persons. *Labatut & al. vs. Rogers,*
- 2 But where the goods of others were so mixed with those of the deceased, as not to be distinguishable without strict examination, the owners being absent, as the administrator was bound to take the whole, he was entitled to compensation for his trouble and risk. *Same case.*

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id.

AGENT.

- 1 If the agent evidently meant a voyage to a certain place, and the principal one to another their error prevents any contract of mandate from taking place. *Terril & al. vs. Flower & al.*
- 2 The act of the principal, ratifying that of the agent is to be liberally construed. *Same case,*

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id.

See ATTACHMENT, 1, SALE 5.

APPEAL.

- 1 From an order submitting accounts to referees is premature. *Davis vs. Preval,*

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- 2 The surety of an appeal bond is liable to pay, where the principal has failed, without an execution issuing against the latter. *Dela-zerry vs. Blanque's syndics.* 560
- 3 If the statement of facts be so imperfect, that the court cannot discover from it the merits of the case, the appeal will be dismissed. *Smith vs. Kemper.* 563
- 4 Exceptions to the opinion of the inferior court, on matters of form alone, are not noticed on an appeal, as the judgment cannot be reversed on account of informalities in the proceedings. *Labatut & al. vs. Rogers.* 272
- 5 If the jury find all the issues submitted by a party, in his favor, and judgment be, on his motion, entered thereon, he cannot appeal. *Barnwell vs. Harman.* 722
- 6 The opinion of the inferior court, in admitting a witness, must be tested according to the circumstances of the case at the time it was given. *Piernas vs. Blanque's syndics.* 577
- 7 When the whole facts come up with the record, a bill of exceptions to the court's charge is not noticed. *Maurin vs. Toustin,* 496
- 8 When testimony is taken down, in the inferior court, under the act of 1817, the presumption is, if there be no suggestion of the contrary, that the record contains all the evidence. *Barnwell vs. Harman,* 722
- 9 An *alias* citation may be taken after an irregular service of the first. *Lafon vs. Riviere.* 1

See ABATEMENT, CA' SA. 2.

ARBITRATORS.

- Whether those appointed by the court may

give their award, at any time during the pendency of the suit? *Lafon vs. Riviere.* 1

ASSIGNMENT.

Of goods by a person about to remove from the state, leaving debts therein, made for the purpose of providing for the payment of the freight, duties, and other charges thereon, and to secure one who became bail for the assignor, is not void. *Woodward & al. vs. Braynard & al.* 572

ATTORNEY.

1 The compensation of that of the absent heirs, may be fixed by the inferior court, and if the allowance be not exorbitant, the supreme court will not interfere therewith. *Labatut & al. vs. Rogers & al.* 416

2 A candidate for a licence of, may be admitted in satisfying the court, that he has received a good classical education, and that he has studied two years with an attorney duly admitted. *General rule.* 280

BANK.

1 It cannot obtain judgment on motion, under the act of 1818, without giving notice to the party. *State bank vs. Seghers.* 724

2 A power to fill a blank check is personal. *Musson vs. bank U. S.* 707

3 The proceeds of goods sold on commission, placed in bank, by the vendor to his own account, cannot be viewed as a deposit belonging to the owner of the goods. *Same case.* id.

4 But, if the vendor, on his death bed, declares that the money belongs to the owner of the

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goods, and orders a blank check to be given him for it, this will be such evidence of the property of the owner, that he may maintain an action for it. *Same case.*

id.

C.A. S.F.

- 1 A defendant confined on it, cannot be discharged on an application *ex parte*, although the plaintiff, in the execution, neglects to make the necessary advance for his support. *Dodge's case.*
- 2 If he procures his discharge therefore, on an *habeas corpus*, without notice to the plaintiff, the latter may appeal. *Same case.*

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id.

CARRIER.

The owners of a steam boat, which is destroyed by fire, are not liable to the freighters if it appear that proper diligence was used, although the accident happened in the night, whilst the boat was on her return from a trip up the river to procure wood, during which she ran aground while her hands were getting in wood. *Hunt vs. Morris & al.*

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CESSION OF GOODS.

- 1 Some property to be ceded is not required to entitle a debtor to relief, under the insolvent laws. *Miles vs. his creditors.*
- 2 After the filing of the *tableau of distribution*, by the syndics of the creditors of an insolvent, a notice to all the creditors is an indispensable formality. *Williamson & al. vs. their creditors.*
- 3 The expenses of the liquidation of an insolvent's estate, are to be paid out of the unincumbered property ceded; but, if that be

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insufficient, out of the rest. *Goforth vs. his creditors.*

519,

CHECK.

See BANK, 2, 4.

CITY COURT.

No action can be brought, in the court of the parish and city of New-Orleans, on a judgment rendered in the Alabama territory. *Johnson vs. Dunwoody.*

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CONSIGNEE.

Who receives the goods is liable for the freight, *Smith vs. Flower & al.*

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CONTRACT.

- 1 By parol, cannot affect land, except a lease. *Castanedo vs. Toll.*
- 2 If one contracts to conduct a newspaper for a given time, and he quits it before the expiration, because the owner insists on having a piece printed in it, which he disapproves, he cannot recover payment for the time, during which he conducted the newspaper, *Mortmain vs. Lefaux.*
- 3 An obligation to deliver a quantity of cotton, is not discharged by the nominal sum of money which the parties intended to discharge by the delivery of the cotton. *Williams vs. Gilbert.*

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See AGENT, 1, ASSIGNMENT.

CURATOR.

- 1 If he sell as part of the estate, a slave to which the deceased had only an apparent title, and whom he was bound to re-convey, the real owner will be entitled to the proceeds of the sale, and will not be considered mere-

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- ly as a creditor of the estate therefore. *Donaldson vs. Rust.* 260
- 2 Whether the year and a day allowed by law to the curator of a vacant estate runs, in every case, from the date of his appointment? *Musson vs. Bank U. S.* 707
- 3 If the testator disposes of property, which he was bound to leave to his brothers and sisters, and appoint an executor, a defensor will be appointed to them, but not a curator, till after a division. *Johnson vs. Davidson.* 506

DED. POT.

- 1 In determining on the propriety of allowing a *ded. pot.* the court may look into the record of another suit, between the same parties. So may the supreme court, on the appeal, if the record be there also. *Fleckner vs. Grieve's syndics.* 504
- 2 If fraud be not alledged, no *ded. pot.* shall be granted to prove it. *Same case.* id.
- 3 The affidavit made to obtain a *ded. pot.* ought to state the fact intended to be proven, that the opposite party may have the opportunity of avoiding a delay by admitting it. *Same case.* id.

DEED.

The proof of a deed cannot be rejected on the ground, that it appears to have been improperly obtained, and that the donation which it contains was contradicted by the sale of the thing given, by the party who offers the deed. *Rouville & al. vs. Rouville.* 702

DOWER.

- 1 If, by a contract of marriage, land purchased

- with money, received as part of the dower may be sold by the husband, with the wife's consent, land in common between the wife and her children by a former marriage, and adjudged to her at its valuation, cannot be sold under the contract. *De Armas and wife vs. Hampton*, 567
- 2 Under the Spanish government, if the contract of marriage stated, that the wife had brought a certain sum as her dower, in a given number of slaves, the property of the slaves passed to the husband. *Jourdan & al. vs. Williams & al.* 659
- 5 The wife has a mortgage for her dower on any real property sold by the husband. *Nadaud vs. Mitchell*. 688

EVIDENCE.

- 1 When an act is attacked as fraudulent, parol evidence is admissible to prove or rebut the obligation of fraud. *Fouque's syndics vs. Vignaud*. 423
- 2 Same point. *Croizet's heirs vs. Gaudet*. 524
- 3 So when the verity of an act is contested. *Same case*. id.
- 4 Parol evidence cannot be received of the irregularity of the proceedings of a family meeting, before the parish judge. *Tregre vs. Tregre*. 665
- 5 The heir may shew, that a sale made by his ancestor is feigned. *Same case*. id.

See DEED, WITNESS.

EXECUTOR.

If there be judgment against an executor, for the debt of his testator, and no property of

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the estate being found, an execution issues against that of the executor, he cannot be relieved, without shewing that the property of the estate, which came to his hands, has been legally administered. *Querry's ex'r. vs. Faussier ex'rs.*

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HABEAS CORPUS.

See *CA' SA' 2*

INTEREST.

- 1 Writing is not of the essence of a contract for conventional interest. *Delacroix vs. Prevost's ex'rs.* 276
- 2 No interest, even from the inception of the suit is allowed, where the demand is liquidated by the judgment only. *Andry & al. vs. Foy.* 689
See MORTGAGE 2.

INTERROGATORY.

- 1 A party who is required to answer an interrogatory which he is not bound to answer, ought to move to have it stricken out; if he do answer, he will be concluded thereby. *Delacroix vs. Prevost's ex'rs.* 276, 727
- 2 An interrogatory may be put to an executor. *Same case.* 730

JOINT OWNER.

- 1 A joint owner is liable for ordinary neglect, *Ralston vs. Barclay & al.* 649
- 2 If he be in the habit of having the common ship insured, and insures his own half only, he will be liable to his co-owner for the loss. *Same case.* id.

See ATTACHMENT 2.

LEGATEE.

He cannot be compelled to suffer a deduction from his legacy, in order to pay a debt, not established contradictorily with the heir or representative. *White vs. Hepp & al.*

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MORTGAGE.

- 1 If the vendor covenant to clear the estate from a mortgage, he will not be permitted to recover the price, till he satisfy the vendee that the mortgage is raised. *Bouthemy's ex'r. vs. Ducournau.*

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- 2 And interest will not be allowed him, except from that time. *Same case.*

id.

See DOWER 3, PARAPHERNAL ESTATE.

NEW TRIAL.

Whether one will be granted to afford an opportunity to shew, that a witness, sworn without objection, perjured himself? *Saulet vs. Loiseau.*

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PARAPHERNAL ESTATE.

All the wife's property, not constituted in *dot*, is paraphernal, and she has a mortgage on the husband's property, if he disposes of it. *Hannie vs. Browder.*

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PARTNERSHIP.

- 1 The dissolution of a partnership does not prevent the partners from bringing suit. *Ter-ril & al. vs. Flower & al.*
- 2 The creditor of a partner has no right to be placed on the bilan of the partnership, nor on that of his debtor's co-partner. *Desse's vs. Plantin's syndics.*
- 3 A debtor of a firm on its failure, cannot plead

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to the action of the syndics, payment and satisfaction by the individual partner, with whom he contracted, to the other. *Duncan & al. syndics vs. Bechtel.*

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PARTITION.

- 1 An heir may bring an action of partition, against a purchaser of the estate from his co-heir. *Gravier & al. vs. Livingston & al.* 281
- 2 The action of, is prescribed by the lapse of thirty years only. *Same case.* id.
- 3 A husband may proceed, without his wife, to the partition of the moveable part of a succession accrued to her. *Tregre vs. Tregre.* 665

See EVIDENCE.

PETITION.

See PRACTICE. 1, 6.

PRACTICE.

- 1 Every circumstance, which is proper to be known, in order to put the defendant on his defence of the suit, ought to be stated in the petition. *Duncan & al. syndics vs. Bechtel.* 510
- 2 When a suit is not on trial, before a jury, it cannot be discontinued, without the leave of the court. *Hunt vs. Morris & al.* 676
- 3 When causes are consolidated the court cannot till they be severed, give judgment on either of them alone. *Lafon vs. Riviere.* 1
- 4 No judgment can be given against a party, who is not in court, by his person or property; nor any final one, until after answer filed or judgment taken by default. *Woodward & al. vs. Braynard & al.* 572
- 5 When the illegality of a contract is not pleading, and does not appear from the evidence

in support of it, if there be a verdict for the plaintiff, the judgment will not be disturbed, though some evidence of illegality may result from the cross-examination of the plaintiff's witnesses, or from the testimony adduced by the defendant. *Hurvey vs. Fitzgerald.*

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6 A claim for damages, on account of the defendant's neglect in managing the plaintiff's affairs, must be specifically laid and will not be admitted, on a petition, which charges only that the defendant is indebted on an account. *Ralston vs. Barclay & al.*

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7 Parties are to be admitted to lay the facts of their case to the jury, as naked as they can present them; and no other restriction can be imposed on them, than to require that the facts be pertinent. *Planters' Bank vs. George.*

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8 If the proceedings of a family meeting, held before the parish judge, for the partition of an estate be recorded in French, they will be set aside. *Tregre vs. Tregre.*

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See ABATEMENT, ATTACHMENT, APPEAL, CA'S, CITY COURT, CESSION OF GOODS, DED. POT. EVIDENCE, EXECUTOR, INTEREST, INTERROGATORY, NEW TRIAL, WITNESS.

PREScription.

See PARTITION 2, SLAVE 1.

RENT.

When the tenant holds over after notice to quit, and a declaration that a specified higher rent will be required, no greater rent can be recovered, without evidence of the value

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of the rent or of damages sustained by the landlord. *Rodriguez vs. Combes & al.*

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RIPARIOUS ESTATE.

- 1 The words *face au fleuve, primâ facit* designate, in Louisiana, a riparious estate. *Morgan vs. Livingston & al.*
- 2 The vendee of a riparious estate acquires a qualified property in the bank of the river, and consequently in the batture, which may be added to it. *Same case.*
- 3 An intervening highway does not prevent this, if the owner of the estate be bound to repair the way and the soil of it to be at his risk. *Same case.*

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id.

id.

SALE.

- 1 A sale of land, under private signature, is binding, although it recites the intention of the parties, to have a notorial act of it executed. *Poyfarre vs. Delor.*
- 2 If the vendor be brought in by his vendee to defend his title, the judgment on such a suit does not bind him as to the amount of damages, which he may afterwards demand from the then plaintiff, his own vendor. *Maurin vs. Toustin.*
- 3 Although several slaves be sold together for a single price, the sale will not be rescinded for all, if any one, or a number less than the whole, have any redhibitory defect. *Andry & al. vs. Foy.*
- 4 The tradition of a real estate may be made by the consent of the vendor, that the vendee take possession. *Cuvillier vs. McDonogh.*
- 5 If he who has sold goods for another, renders

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an account of them which is accepted, he cannot afterwards be called upon for the price of any part of them uncollected. *Rion vs. Gilly & al.*

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See MORTGAGE, SLAVE 3.

SLAVE.

- 1 One who enjoyed her freedom in Hispaniola, during the revolution there, may reckon that time in establishing her title by prescription. *Metayer vs. Metayer.* 16
- 2 The marriage of a slave acquires civil effects by his emancipation. *Girod vs. Lewis.* 559
- 3 If a slave sold remain with the vendee, he is liable to be seized for his debts. *Pierce vs. Curtis.* 418
- 4 A slave does not become free on his being illegally imported into the state. *Gomez vs. Bonneval.* 656
- 5 A slave may sue another person than her master, in order to obtain her freedom. *Marie vs. Avart.* 731

See SALE 3.

WITNESS.

- 1 One who testifies against his own interest is not liable to objection. *Peytavin vs. Hopkins.* 256
- 2 The creditor of a person, for whose debt the suit is brought, is not an incompetent witness for the plaintiff. *Hewes vs. Lauve.* 502
- 3 A witness is not protected from answering a question, in the ground that he may thereby render himself liable to a civil suit. *Planters' Bank vs. George.* 670

